

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: AMENDMENT TO  
COURT OF CHANCERY RULE 41

This 26<sup>th</sup> day of May, 2004, IT IS HEREBY ORDERED that Court of  
Chancery Rule 41 shall be amended by deleting paragraph (a) in its entirety and  
substituting the following language which is effective June 1, 2004.

Rule 41. Dismiss of actions.

(a) *Voluntary dismissal; effect thereof.* (1) By plaintiff; by stipulation. Subject to payment of costs and the provisions of Rule 23(e) and Rule 23.1 an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs or (ii) by filing a stipulation or dismissal signed by all the parties who have appeared in the action. However, no such dismissal pursuant to subpart (i) above shall be effective where the complaint is subject to a motion to dismiss and the plaintiff has chosen to file an answering brief rather than seeking to amend. See Rule 15(aaa). Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the

merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

William B. Chandler III  
William B. Chandler III

Respectfully advised:

Stephen P. Lamb  
Stephen P. Lamb

Leo E. Strine, Jr.  
Leo E. Strine, Jr.

John W. Noble  
John W. Noble

Donald F. Parsons, Jr.  
Donald F. Parsons, Jr.